TEXAS HISTORICAL COMMISSION

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November 1, 2012

Captain C. R. Pietras
Program Manager, Navy Inactive Ships Program, PMS 333
Department of the Navy
Naval Sea Systems Command
1333 Isaac Hull Avenue
Washington Navy Yard DC 20376-2701

Re:

Project review under Section 106 of the National Historic Preservation Act of 1966 and the Antiquities Code of Texas, Proposed Battleship Texas Programmatic Agreement, Houston, Harris County, Texas (US Navy)

Dear Captain Pietras:

The Texas Historical Commission (THC) has received the Navy's signed copy of the proposed Battleship Texas Programmatic Agreement (PA), and it is our understanding that the Advisory Council on Historic Preservation (ACHP) has asked for some minor alterations in this document, therefore we will take this opportunity to also suggest a few changes. This letter serves as comment on the proposed undertaking from the State Historic Preservation Officer, the Executive Director of the Texas Historical Commission, which is also the agency responsible for administering the Antiquities Code of Texas.

The review staff, led by Elizabeth Brummett, Kelly Little, and Mark Denton, has not only completed the review of the PA, they have reviewed two sets of comments sent to the THC by the San Jacinto Battleground Conservancy (Conservancy), and those documents are attached. While the THC does not concur with many of the Conservancy's comments and suggested changes to the PA, you will note that we have integrated a few of their concerns into our suggested changes.

Below are our suggested changes to the PA:

- 1) The PA should state that no structures constructed in association with battleship's repairs will be permanent.
- 2) TPWD will provide for archeological monitoring of all terrestrial subsurface excavations regardless of depth.
- 3) An archeological emergency discovery cause that provides for Section 106 consultation and mitigative archeological investigations, if deem appropriate, should be added to the PA.

Thank you for your cooperation in this federal and state review process, and for your efforts to preserve the irreplaceable heritage of Texas. We look forward to further consultation with your office and hope to maintain a partnership that will foster effective historic preservation. If you have any questions concerning our review or if we can be of further assistance, please contact Kelly Little at 512/463-7687 or Mark Denton at 512/463-5711.

Sincerely,

Mark Wolfe

State Historic Preservation Officer

MW/mhd

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Cc:

Tuwana Cummings, U.S. Naval Sea Systems Command Michael Strutt, Director, Cultural Resources Program, Texas Parks and Wildlife Department Neil Thomas, Project Manager, Infrastructure Division, Texas Parks and Wildlife Department Christine Whitacre, Program Manager, Heritage Partnerships Program, National Park Service James S. Poles, Environmental Project Manager, U.S. Naval Sea Systems Command, via email Janet Wagner, Chair, Harris County Historical Commission, via email Bruce Bramlett, Executive Director, Battleship TEXAS Foundation, via email Chad Burke, CEO, Economic Alliance, Houston Port Region, via email Jeff Nilsson, Executive Director, Historic Naval Ships Association, via email Garry McMahan, Program Manager, Port of Houston Authority, via email Jan DeVault, President, San Jacinto Battleground Conservancy, via email Casey Borowski, Director, San Jacinto Historical District, via email Larry Spasic, President, San Jacinto Museum of History Association, via email Ronald Brown, President, Sons of the Republic of Texas, San Jacinto Chapter, via email Tammie Nielsen, District Director, State Representative Ken Legler, via email Jeff Dunn, consulting party, via email John R. Ward, consulting party, via email Admiral Will Fisher, Texas Navy Association, via email Nancy T. Burch, Daughters of the Republic of Texas, San Jacinto Chapter, via email Tony Gregory, Chairman, Battleship TEXAS Foundation, via email Cecil Jones, Board of Directors, San Jacinto Battleground Conservancy, via email Amanda Peters, Chief of Staff, State Representative Wayne Smith, via email Andy Smith, Texas Parks and Wildlife Department, via email Russell Kuykendall, Texas Parks and Wildlife Department, via email Scott Triebes, Texas Parks and Wildlife Department, via email Justin Rhodes, Texas Parks and Wildlife Department, via email Patty Matthews, AECOM, via email Leslie Pompa, Crouch Environmental Services, Inc., via email





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San Jacinto Battleground Conservancy is a nonprofit organization dedicated to protecting, preserving and securing the San Jacinto Battleground for future generations by facilitating conservation of land, artifacts and native habitat original to the 1836 battlefield and educating the public about the history and far reaching significance of the battle for Texas independence.

SAN JACINTO BATTLEGROUND CONSERVANCY

808 TRAVIS, SUITE 1429 + HOUSTON, TEXAS 77002

October 31, 2012

Mr. Mark Wolfe State Historical Preservation Officer c/o Texas Historical Commission 1511 Colorado Austin, Texas 78701

RE: Programmatic Agreement Concerning the Battleship TEXAS

Dear Mark:

Thank you for giving us the opportunity to express our concerns with the Battleship Texas Programmatic Agreement.

Attached are our proposed revisions which we believe will allow maximum flexibility for ship repairs while at the same time affording some protection to the battleground and any historic resources that may still be in place in the affected area. Our concern with battleship repair activities is that there should be recognition by all parties that even though the ship sits in a wet berth, the surrounding land is part of the San Jacinto Battlefield National Historic Landmark and for this reason the landscape and ground deserve the protection afforded to such sites.

We are very appreciative of the fact that you have allowed us to comment on this agreement and are willing to discuss any of our suggestions if you have any questions. We know this is a complex problem and we want to be a helpful resource to you.

Sincerely,

SAN JACINTO BATTLEGROUND CONSERVANCY

Jan DeVault, President
Jeff Dunn, Vice-President
Cecil N. Jones, Vice-President

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1. The fifth "whereas" clause on page 2 should be changed to read as follows:

"WHEREAS, the Navy determined that the repair work as planned may affect but will not adversely affect the Battleship Texas;"

This revision deletes the additional reference to "or the San Jacinto Battleground." This is deleted because the scope of the PA is limited to repairs and maintenance of the vessel (as indicated in the previous whereas clause. In addition, no findings of fact have been established or disclosed to suggest that "shore side activities" on the ground adjacent to the ship will never result in a potential or actual adverse effect on the battleground.

2. Change Section I, Paragraph 3 to the following:

- "3. (a) Any "shore-side activities" (defined below) associated with the repairs of Battleship Texas conducted under this PA that are confined to the highlighted areas shown in Attachment C and that do not result in the disturbance of the surface shall not require further Section 106 consultation. The term "shore-side activities" shall mean the temporary placement of supplies, vehicles, and equipment on the ground and the erection of sheds or storage structures to facilitate repairs, with the understanding that such placement of supplies, vehicles, and equipment, and the erection of any sheds or storage structures, shall be temporary and reversible and shall be removed from the ground promptly following the completion of the repairs that necessitated the use of the ground. If any "shore-side activities" require disturbance of the ground, TPWD shall conduct shovel tests, metal detecting, or other appropriate archeological survey within the area to be disturbed prior to such disturbance, to be performed by a professional archeologist retained by TPWD, and if any historic artifacts are discovered as a result of such survey, NAVSEA and TPWD shall notify the SHPO for consultation, and the SHPO shall be afforded thirty days for comment or to determine whether reinitiation of Section 106 consultation pursuant to 36 C.F.R. Part 800 is warranted before any ground disturbance in the affected or adjacent area commences.
- (b) This PA shall not authorize any "shore-side activities" on any land area not included in the shaded area of Attachment C.
- (c) Any activities that require barges, coffer dams or equipment necessary for repairs to the ship, and that are to be conducted within the ship's current berth or other adjacent areas that are currently underwater ("Water Repair Activities"), shall be temporary and reversible, and shall be removed following completion of such repairs. Prior to the commencement of any Water Repair Activities that will or will likely result in the disturbance of any soil that is currently underwater,

TPWD shall retain a professional marine archeologist to conduct an archeological survey of such soils prior to the commencement of such Water Repair Activities. If any historic artifacts are discovered as a result of such survey or surveys, NAVSEA and TPWD shall notify the SHPO for consultation, and the SHPO shall be afforded thirty days for comment or to determine whether reinitiation of Section 106 consultation pursuant to 36 C.F.R. Part 800 is warranted before the Water Repair Activities commence.

- (d) If the signators to this PA agree to amend this PA to expand the land area designated on Attachment C, or to change any of the provisions of subsections (a) or (c) of this Paragraph 3, NAVSEA shall notify the concurring parties to this PA by email at the email address set forth adjacent to the concurring party's name on the exhibit attached hereto, and such parties shall be afforded thirty (30) days to comment before such amendment shall take effect. NAVSEA shall not be required to make any additional effort to notify a concurring party if an email is returned undelivered as a consequence of the email address being no longer current or accurate."
- 3. Delete Section I, Paragraph 4, because this is now addressed in Paragraph 3(b) above. Renumber Section I, Paragraph 5 to Paragraph 4.
- 4. <u>Section III</u>. Change "every six months" to "each calendar quarter." TPWD is required to notify the LBB of progress made each calendar quarter. We see no reason why quarterly reporting to the public imposes any greater burden on TPWD.
- 5. <u>Section VI</u>. Revise the first sentence to add the underlined language as follows: "If any signatory to this PA determines that its terms will not or cannot be carried out, <u>or determines for other reasons that this PA should be terminated</u>, that party shall immediately consult with the other parties to attempt to develop an amendment"

The exhibit listing the nam	es of the concurring parties should include the
following: "Any person listed on	this exhibit who signs the PA as a concurring
party may change the email address set forth next to such person's name by	
sending an email to NAVSEA at _	,,, ,

Mark Denton

From:

Jeff Dunn [jddunn@flash.net]

Sent:

Monday, October 22, 2012 11:35 AM

To:

Mark Wolfe

Cc: Subject: Mark Denton; Elizabeth Brummett; Kelly Little Fw: Re: Battleship Texas Programmatic Agreement

Dear Mark,

I am writing regarding the referenced PA which I received in "final" format last Thursday afternoon. I hope you have NOT approved or signed off on this PA. Please review my comments below to NAVSEA. Jan DeVault, Cecil Jones and I would like to have a conference call with you and your staff regarding this matter.

This PA will have such a profound and long-term impact on the ship and the battleground that I think it would be prudent for all THC commissioners to have the opportunity to review and comment on the PA before you sign it.

Best regards,

Jeff

--- On Mon, 10/22/12, Jeff Dunn < jddunn@flash.net> wrote:

From: Jeff Dunn <jddunn@flash.net>

Subject: Re: Battleship Texas Programmatic Agreement

To: "Tuwana H CIV NAVSEA SEA 00LCummings" <tuwana.cummings@navy.mil>

Date: Monday, October 22, 2012, 1:56 AM

Ms. Cummings,

Now that I have had an opportunity to review the PA, I am greatly concerned about NAVSEA's decision to include provisions that allow the taking of adjacent battlefield property without any Section 106 protections under the assumption that no activity on this land will ever disturb archeological resources or create any adverse effect on the battlefield.

Section I.3 permits any "shore-side activities" disturbing up to 3 feet of the area shown in Attachment 3 without any Section 106 protections and without regard to whether these activities result in permanent structures, visual impacts, or destruction of archeological resources in that area. There is nothing in the PA that requires even a cursory 106 archeological survey or fulfillment of any of the other 106 protections afforded to National Historic Landmarks that would otherwise clearly apply to any federal undertaking in this area if the ship were not present.

Could you please advise as soon as possible the factual basis for NAVSEA's determination that this portion of the battlefield is not worthy of any protection from "shore-side activities" for as long as the ship remains in place, and what reports and analyses NAVSEA relied upon to make this determination?

In addition to the above, Section I.3 also exempts "any activities" that disturb the ground within the existing

berth, regardless of impact on the battlefield or the extent of such activities, from Section 106 review. Once again, no protection is afforded to any archeological resources that may be present in this area and nothing prevents the construction of permanent facilities within the existing berth. What is the factual basis for this determination?

Under Section I.4, if "any activities" disturb or potentially disturb the ground outside the area shown on Attachment C (which presumably includes activities within Attachment C that disturb land below 3 feet), the only protection afforded is notice to the SHPO and 30 days to comment. There is no requirement to open a 106 proceeding or to notify any of the consulting parties or the ACHP regardless of what is being planned for such ground disturbance, and no requirement to give anyone other than the SHPO the opportunity to comment. There is also no meaningful opportunity for the SHPO to conduct any analyses or archeological surveys concerning the impact of such disturbance, which means that notification is largely perfunctory with no meaningful way for the SHPO to respond in a manner needed to protect the battlefield. Moreover, there is no procedure in place to notify the ACHP or the consulting parties that NAVSEA has notified the SHPO under that provision -- consequently, by the time anyone who cares about the impact of the planned activities finds out about the notification, the "activities" will have already been approved.

It looks as though NAVSEA has made the unilateral determination that Section 106 will no longer apply to any activities affecting any portion of the battlefield that may need to be appropriated for the benefit of the ship, regardless of what is constructed, how the land is used, or the affect on archeological resources. This is a unilateral decision to exclude the battlefield from any Section 106 review when these activities are needed for the life of the ship. The PA prescribes no activities that could even potentially trigger a 106 review unless the dry berth project is re-initiated, but if that should ever occur after these repairs are made, any adverse effect resulting from these activities on the battlefield will be a fait accompli.

This determination is being made despite the finding made earlier this year concerning the Area of Potential Effects and the unanimous determination of all parties that the dry berth project (which did not affect anything other than the berth) had a potential adverse effect on the battlefield within the meaning of Section 106. In fact, the *greatest* potential adverse effect on the battleground is precisely the area that will be excluded from any further Section 106 review under the PA.

I should also point out that NAVSEA's determination directly contradicts not only extensive archival scholarship concerning the boundaries of the battlefield, but also the conclusions reached by the cultural impact study commissioned by AECOM for TPWD in connection with the dry berth project.

In addition to the above, there are not even minimal transparency or accountability procedures embedded in the PA as repairs are planned and take place. The posting of actions taken every six months on TPWD's website does nothing to keep consulting parties informed in advance. The consequence of this decision will result in the concerns I raised at the last 106 meeting -- it will force consulting parties and others interested in this project to issue numerous Open Records requests to TPWD and the SHPO under state law to stay informed, a result that I was attempting to avoid with my suggested revisions to the initial draft of the PA. I hope that both TPWD and the SHPO are aware of this consequence.

The "final PA" is a significant deviation from what was discussed at 106 consultation meetings as well as the initial draft of the PA, and frankly quite a surprise. As noted above, I would like an explanation of what NAVSEA relied upon to make the no adverse effect determination on the affected land.

Jeff Dunn